

U. S. CIRCUIT COURT. SOUTHERN DIST. OF N. Y.

The Burt Company)	In Equity
versus)	
John C. English)	No. 8014

BILL OF COMPLAINT, 1902

English 3/1/01 with Bunt Co. p1, 2 - 10 3/1/06

Bunt Co. org. ca. 10/19/00

Beg. to set up its factory & labs
ca. 3/1/01 p3

R. R. Wile
1976

U. S. Circuit Court. Southern District of New York

The Burt Company)	
)	In Equity
versus)	
)	No. 8014
John C. English)	

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IN THE CIRCUIT COURT OF THE UNITED STATES
For the Southern District of New York.

THE BURT COMPANY

v.

In Equity.


No. 8014

JOHN C. ENGLISH.

NOTICE OF MOTION.

TO THE DEFENDANT:

PLEASE TAKE NOTICE that on the Bill of Complaint herein and the affidavit of Edward D. Easton, copies of both of which are herewith served upon you, I shall move this Honorable Court in the Court room thereof in the Post Office Building in the Borough of Manhattan and City of New York, on the 14th day of February, 1902, at the opening of the Court on that day, or so soon thereafter as counsel can be heard, for a preliminary injunction pursuant to the prayers of the Bill.


ELISHA K. CAMP,
Solicitor and of Counsel for
Complainant,
277 Broadway,
New York City.

Dated New York City,
February 7, 1902.

BILL OF COMPLAINT.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT
COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK.

The BURT COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and a citizen of said State, and having its principal office and place of business in Milburn, in the State of New Jersey, brings this its Bill of Complaint against JOHN C. ENGLISH, a citizen of the State of New York and being an inhabitant of and resident in the Southern District of New York.

And thereupon, your orator complains and says:

1.

That heretofore and on or about the first day of March, 1901, your orator and the said JOHN C. ENGLISH entered into an agreement in writing by the terms, conditions, agreements and covenants whereof the said ENGLISH agreed to give his entire time and undivided services for a period of five years from the date of said contract, to wit, from the said first day of March, 1901, to the exclusive service of your orator in the manufacture of talking-machines, other than talking-machines patents for which are now applied for, and of records to be used in connection with the same, and further, in the work of improving both the talking-machine records and evolving any devices or improvements which might be used in connection with the same, the said records to be manufactured being what are commonly known and designated as zigzag disc sound-records; that the said services of the said ENGLISH contemplated and in-

✓ cluded the designing and producing of improved apparatus and in developing and perfecting improved processes for recording and reproducing zigzag disc sound-records, for which services your orator agreed to pay the said ENGLISH the sum of three thousand (\$3000) dollars for the first year commencing January 1, 1901, which was to continue until the profits of The BURT COMPANY, from the manufacture of talking-machines, records or any additional improvements or devices connected therewith, should amount to the sum of Thirty-five thousand (\$35,000) dollars per year, when the said ENGLISH was to receive a salary at the rate of three thousand six-hundred (\$3,600) dollars per annum, and a yearly salary of four thousand (\$4000) dollars when the profits connected with that portion of the business above stated should reach the sum of forty thousand (\$40,000) dollars per annum.

2.

The said contract further provided that all inventions and improvements that the said ENGLISH might invent or produce in connection with the business above stated during the term of his employment by your orator under said contract, to wit, until March 1, 1906, should be and become the property of your orator which condition on the part of the said ENGLISH to be duly kept and performed was one of the considerations which induced your orator to enter into said contract.

3.

Your orator was organized and created under the laws of the State of New Jersey on or about the 19th day of *October*, 1900, and manufactured sound-records commonly known and designated as zigzag disc records; that the said records are made in hard material containing sound-grooves of uniform depth with lateral undulations corresponding to

sound-waves as follows: FIRST, the original record is cut or engraved in a tablet of wax-like material, a suitable recording-tool cutting or engraving into the said tablet and removing the material in chips or shavings to produce a groove of uniform depth characterized by lateral undulations corresponding to the sound-waves; SECOND, the surface of this engraved sound-record or wax-like sound-record is then rendered electrically conductive, as by the application of finely powdered graphite or the like; THIRD, a matrix is deposited upon this electro-conductive surface by electrolysis, in the usual manner; and, FOURTH, the matrix having been separated from the original, is backed up and used as a stamp or die for impressing into a disc or tablet of suitable material to produce the ultimate or commercial zigzag disc sound-record as aforesaid. As the services to be rendered were unique, special and extraordinary they were services which required special aptitude, skill and experience, and the said ENGLISH was employed because he was able to render such services, being one of the few experts in the business.

4.

Your orator thereupon on or about the said first day of March, 1901, began the fitting up ^{its} ~~of a~~ factory and laboratory for the manufacture of the aforesaid articles, and also in designing approved processes and apparatus relating thereto, in advertising its wares to the public and various other matters in connection with its said business, expending large sums of money, until it soon had a thoroughly equiped factory and one of the best for the purposes aforesaid in the United States or elsewhere; that a large demand has been created of large value to your orator for its wares, and that your orator is still engaged in its said business in which it has invested up to date

large sums of money in special machinery, tools, apparatus and processes used in the manufacture of its said wares, all of which was at all of the times herein stated well known to said ENGLISH; that your orator's said business is jeopardized by the said ENGLISH'S retirement, and it is and will be unable to fill orders for its said wares.

5.

That the said ENGLISH is and was at all of the times herein mentioned possessed of peculiar and unusual and rare, unique, special and extraordinary aptitude, skill and experience in the art of making and producing the said zigzag disc records and the apparatus, processes and inventions relating to that art; and that it would be almost impossible to replace the said services which he could render by the employment of any one else, the number of experts in the particular art being limited to about half a dozen men in the United States and elsewhere.

6.

That by reason of the facilities which your orator afforded the said ENGLISH as its said employee and by reason of his experiments while in your orator's employment conducted with the aid of your orator's money, tools and machinery, together with the knowledge, skill and experience which the said ENGLISH possessed as aforesaid at the time when he entered your orator's employment, the said ENGLISH succeeded in producing a zigzag disc record which could be commercially utilized, and which was commercially utilized by your orator, but which was made and produced in a manner known only to the said ENGLISH and made and produced by him while he was in the employment of your orator and which in accordance with the terms of said contract belonged and still belong to your orator.

Pursuant to the terms, covenants, conditions and agreements of said contract of March 1, 1901, the said ENGLISH did thereupon on or about said date enter into the employment of your orator and did continue in its employment under said contract until on or about the 18th day of January, 1902; and thereupon on or about the 2nd day of February, 1902 notwithstanding the fact that your orator has performed all the covenants, conditions and agreements of the said contract on its part to be performed, the said JOHN C. ENGLISH wholly without the fault of your orator, ~~_____~~ did refuse any longer to perform any services under the said contract of employment and has ever since refused and now refuses so to do and did leave your orator with large expenses made as hereinbefore stated and with apparatus, machinery and tools and without facilities for carrying on its business in so far as the same depended upon the knowledge, skill and experience as aforesaid of the said ENGLISH, and did leave your orator in a position where it could not then and cannot now carry out its contracts and fulfil its orders with others to furnish the said zigzag disc records and the said other articles manufactured by it.

8.

The said ENGLISH while in your orator's employment under the aforesaid contract of March 1, 1901, did design and produce apparatus and processes relating to the art of making zigzag disc records in the manufacture of the product of your orator, which were and are of great value to it; but that while in the employment of your orator as aforesaid, the said ENGLISH did not disclose to it the aforesaid processes and improvements designed and produced by him and learned and acquired by him while in its employment, and has not given it such descriptions, either written or

verbal, or furnished it with the proper diagrams, drawings or formulae thereof, with proper directions for making, using and pressing the same as would enable it to utilize the same.

9.

That thereupon refusing longer to perform services to or for your orator under the said contract of employment, the said ENGLISH did further threaten and now threatens, and, as your orator is informed and verily believes, is about to disclose to others than your orator and its authorized officials or attorneys, the processes, apparatus, and improvements produced or developed by him for making the said zigzag disc sound-records, or relating thereto or employed therein, or some of them, which in whole or in part are secret and belong solely to your orator, and further threatens and still threatens and as your orator is informed and verily believes is either about to enter the employment of one or more of others than your orator who will compete or are competing with your orator with reference to the public in the manufacture and sale of records and apparatus for making the said zigzag disc sound-records as well as the said other articles above mentioned, or is about to begin the manufacture himself of such apparatus as a competitor of your orator.

10.

That by reason of the violation of the contract of March 1, 1901, by the said JOHN C. ENGLISH as aforesaid, and by reason of his refusal any longer to perform services for your orator under such contract; and by reason of the knowledge, skill, aptitude and experience which the said ENGLISH possesses as an expert to an unique, special and extraordinary degree as aforesaid, which your orator by reason of said ENGLISH'S acts can no longer utilize and

and avail itself of; and also by reason of the processes, designed by the ENGLISH and known only to him, which were produced and made by him while in your orator's employment as aforesaid, and which because of the said ENGLISH'S acts as aforesaid, your orator can no longer utilize and avail itself of; and by reason of the refusal of the said ENGLISH to disclose to your orator the said processes, formulae and designs, and by reason of the fact that because of the said ENGLISH'S acts your orator has been prevented in filling its orders for furnishing its said zigzag disc sound-records and other wares; and by reason of the competition and injury to its business which would result to your orator by reason of the said ENGLISH'S acts as aforesaid; or, if the said ENGLISH is allowed to utilize and enjoy for himself or for others than your orator his said knowledge, skill, aptitude and experience and the processes, apparatus, designed or produced by him while in the employment of your orator, your orator has suffered and will suffer damages which it is and will be impossible to compute and that by reason thereof your orator will be irremediably and irreparably damaged.

11.

Your orator has not violated any of the terms, covenants, agreements and promises of said contract of March 1, 1901, on its part to be performed, but, on the contrary, has always been, and still continues to be, ready and willing to perform all of the terms, covenants, conditions and agreements thereof on its part to be performed, and has endeavored to induce said ENGLISH to return to its employment and carry out the said contract being still ready and willing to employ him under the terms of said contract if he will return to its employment, but the said ENGLISH although often requested so to do has refused and

and still refuses to return to its said employment, and to carry out his part of the contract.

12.

And by reason of the premises your orator is forced to resort to Equity because it has no adequate remedy at law and because at law it would be impossible to take such steps as would prevent the damages to your orator above complained of.

13.

Annexed hereto and made a part of your orator's bill of complaint marked "Schedule A", is a copy of the said contract of March 1, 1901, hereinbefore referred to, and your orator makes profert of the said original contract.

14.

And your orator further shows unto your Honors that suit is a controversy between persons of different States, complainant being a citizen of the State of New Jersey and the defendant JOHN C. ENGLISH being a citizen of the State of New York, and being an inhabitant of and resident in the Southern District of New York; that the matter in dispute exceeds, exclusive of interest and costs, the sum or value of Two thousand (\$2000) dollars.

To the end, therefore, that your orator may have that relief which it can only obtain in a Court of Equity, your orator prays as follows:

1. That the defendant JOHN C. ENGLISH be enjoined and restrained during the pendency of this action and until the termination of the period provided for in the said contract of employment of March 1, 1901, from giving any of his time, work, services, skill or attention to any person, firm, association or corporation, other than your orator,

and from making or entering into any contract or agreement to do any work or perform any services or give any of his time, work, services, skill or attention to any person, firm, association or corporation, other than your orator, in the matter of making or producing zigzag disc sound-records or copies thereof, or in designing or producing improved apparatus, or in developing or perfecting or producing any processes for recording or reproducing sounds, or in designing or manufacturing, or assisting in the manufacture, indirectly or otherwise, either for himself or for others, except your orator, of any processes or apparatus in the art of sound-recording or reproducing or relating thereto.

2. That the defendant be enjoined and restrained during the pendency of this action and permanently from disclosing to any person, firm, association or corporation, other than the duly authorized officials or attorneys of your orator, any improvements in the art of making or producing zigzag disc sound-records or improvements in the art of sound-recording or reproducing or relating thereto or capable of employment therein, heretofore made in whole or in part by your orator since March 1, 1901, as well as any improvements, apparatus or formulae of any description relating to the production of the said zigzag disc sound-records or the art of sound-recording or reproducing aforesaid of which the defendant acquired knowledge by virtue of and while in the employment of your orator under his said contract with it as aforesaid or since the said first day of March, 1901.

3. That your Honors will grant unto your orator a temporary restraining order, pending the hearing and decision upon your orator's motion for preliminary injunction herein, and entry of an order therein, strictly enjoining and restraining the said JOHN C. ENGLISH, not to give any of his

time, work, services, skill or attention to any person, firm, association or corporation, other than your orator.

4. That the defendants be decreed to pay the costs of this suit; and

5. That your orator may have such other and further relief as the Equity of the case may require.

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby prayed, and may full, true, and direct answer make—but not under oath, answer under oath being expressly waived—according to the best and utmost of his knowledge, information, remembrance, and belief, to the several matters hereinbefore averred and set forth, as fully and particularly as if the same were repeated, paragraph by paragraph, and said defendant thereto severally and specifically interrogated, may it please your Honors to grant to your orator the writ of subpoena ad respondendum issuing out of and under the seal of this Honorable Court, directed to said defendant JOHN C. ENGLISH, commanding him to answer and make answer to this bill of complaint, and to perform and abide by such orders and decrees herein as this Court may seem just.


And your orator will ever pray.

(Corporate Seal)

THE BURT COMPANY

By 

Edward D. Easton, President.


ELISHA K. CAMP,
Solicitor and of Counsel for
Complainant,
277 Broadway,
New York City.

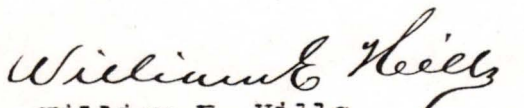
STATE OF NEW YORK,
City and County of New York, SS.:

EDWARD D. EASTON, being duly sworn, deposes and says that he is President of the Burt Company, named as complainant in the foregoing bill; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, save as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true; and that the seal affixed to said bill is the corporate seal of said company, the said complainant, and was by him affixed to the bill by authority of said corporation.

Subscribed and sworn to before me,
this 7th day of February, 1902.



Edward D. Easton



William E. Hills,
Notary Public,
New York County.

MEMORANDUM OF AGREEMENT by and between THE BURT COMPANY of New Jersey, party of the first part, and JOHN C. ENGLISH of New York, party of the second part, WITNESSETH:

WHEREAS, The Burt Company, party of the first part, desires to secure the services of said English, party of the second part, particularly for the manufacture of talking machines, other than talking machine ^{patents} for which are now applied for, and of records to be used in connection with the same, and further, in the work of improving both the talking machine records and evolving any devices or improvements which might be used in connection with the same, and

WHEREAS, in connection with said purpose it is desired by both parties to cover the relations of each to the other under a contract to cover a period of five years, now this agreement WITNESSETH,

FIRST: That the Burt Company, party of the first part hereby agrees to, and does employ said English, party of the second part, and said English agrees to work for said Burt Company for the period of five years, under the following terms and conditions:

FIRST: That said English for the considerations hereinafter stated is to give his entire time and undivided services to the Burt Company during said period, and all improvements or new devices that he may invent in connection with the business above stated shall be the property of the Burt Company.

SECOND: That said English is to receive a salary during the first year, commencing Jan. 1st, 1901, of the sum of \$3,000 per annum payable monthly, and the said salary is to continue at the same rate during the terms of this contract, except as follows: That when the profits of The

Burt Company, from the manufacture of talking machines, records or any additional improvements or devices connected therewith, shall amount to the sum of \$35,000 per year, said English is to receive a salary at the rate of \$3,600 per annum payable monthly. When the profits connected with that portion of the business above stated shall reach the sum of \$40,000 per annum, said English is to receive a salary at the rate of \$4,000 per annum payable monthly. Further, in consideration of entering the employ of The Burt Company under these conditions by said English, it is hereby agreed by The Burt Company that 10% of the present Common Stock, amounting to \$150,000, of said Company shall be issued in said English's name and placed in the hands of a trustee in escrow within three months from this date for the benefit of John C. English, said party of the second part. The conditions of the trusteeship regarding this stock shall be as follows, and shall continue for a period of five years:

FIRST: That all dividends declared on said stock during the period of said trusteeship shall be payable to John C. English beneficiary under the Trust.

SECOND: Should said English during the terms of this contract leave the employ of said The Burt Company in violation of this contract then the stock held by the Trustee shall be returned to the Company and English's interests therein shall cease.

THIRD: After the period of five years said stock shall be delivered to said English without further consideration by the Trustee, but said English shall give The Burt Company, in case of the sale of said stock, the first option on same at an equal price.

FOURTH: If, during the life of this contract, same should become terminated by mutual agreement otherwise than

the nonsuccess of the business, then The Burt Company shall have the opportunity of taking back the stock from the Trustee on the basis of a fair appraised value of the interests of said English in said stock.

It is also further agreed that in the event of the business not being successful financially, that the contract can be terminated by The Burt Company at the expiration of any one year.

On and under the above stated terms and conditions, John C. English, said second party hereby accepts and agrees to enter into the employ of The Burt Company, and in witness of the above the parties herunto ^{have} set their hands and seal in the City of New York, on the First day of March 1901.

The Burt Co.
Chester R. Hoag Vice Pres.
R. H. McCutcheon, Secretary

JOHN C. ENGLISH

Witness
Stewart J. Irwin

AFFIDAVIT OF EDWARD D. EASTON FOR USE IN
SUIT ABOUT TO BE BROUGHT BY THE BURT COMPANY,
IN THE U. S. CIRCUIT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK, AGAINST JOHN C. ENGLISH.

IN THE CIRCUIT COURT OF THE UNITED STATES
For the Southern District of New York.

THE BURT COMPANY

vs.

In Equity.

JOHN C. ENGLISH.

STATE OF NEW YORK,
City and County of New York, SS.:

EDWARD D. EASTON, being first duly sworn, deposes
and says: I am President of THE BURT COMPANY the complain-
ant herein. I have read the bill of complaint herein, and
have executed the same as President of complainant. The
statements in the said bill of complaint are true of my
own knowledge, save as to the matters therein alleged to
be stated upon information and belief, and that as to those
matters I believe them to be true. I know of my own
knowledge that complainant entered into the said contract
of March 1, 1901, with the defendant said JOHN C. ENGLISH
as set forth in said bill of complaint, because I have
access to the files and archives of the said complainant,
and the said contract is in my possession and before me at
the time of making this affidavit. I also know that the
provisions of this contract have been in all respects fully
and duly carried out by the said THE BURT COMPANY and that
efforts have been and are still being made to induce the
said ENGLISH to return to its employment because I myself
have personally taken part in said efforts. I know also
that up to the present time the said ENGLISH has refused
and still refuses to carry out his part of the contract
and that he continued in its employment from March 1, 1901,

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N.P.
WE H
N.P.

until on or about ^{July 2, 1902} ~~January 18, 1902~~, and that ~~thereafter~~ on or about February 2, 1902 he ~~quit~~ left the complainant's employment since which time he has refused to render any services or do any work for it pursuant to the terms of said contract and in ~~gross and flagrant~~ violation thereof. Said JOHN C. ENGLISH is an expert in the art of making what are commonly known as zigzag disc sound-records and is capable of rendering services which are unique, special and extraordinary, having unusual skill, special aptitude and great experience in that art. He is one of probably not more than half a dozen experts in that particular art in the United States and elsewhere and it was for that reason that he was employed at such a large salary.

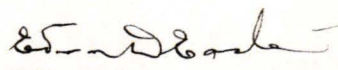
The services of such a man are readily in demand, and the small number engaged in the business are employed by the few rival concerns in the business. It would be a matter of the greatest difficulty, as well as of great expense to secure some one to fill his position and because of the refusal of the said ENGLISH to carry out his contract the business of complainant is practically at a stand-still with orders unfilled. The complainant has, as alleged in the bill, gone to considerable expense in fitting up and equipping a factory for the manufacture of the said zigzag disc sound-records and has probably the most complete and thoroughly equipped factory to be found in this country or elsewhere, all of which expense was incurred principally because of the representations made and inducements offered by the said JOHN C. ENGLISH and with the idea of securing his exclusive services in the manufacture of the said ^{zigzag} disc sound-records and improvements in regard thereto which he asserted confidently he would be able to make. The said records are made in hard material containing sound-grooves of uniform depth with lateral undulations corresponding to

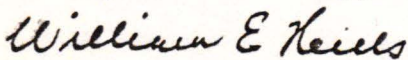
sound-waves as follows: FIRST, the original record is cut or engraved in a tablet of wax-like material, a suitable recording-tool cutting or engraving into said tablet and removing the material in chips or shavings to produce a groove of uniform depth characterized by lateral undulations corresponding to sound-waves; SECOND, the surface of this engraved sound-record or wax-like sound-record is then rendered electrically conductive, as by the application of finely powdered graphite or the like; THIRD, the matrix is deposited upon this electro-conductive surface by electrolysis, in the usual manner; and, FOURTH, the matrix having been separated from the original, is backed up and used as a stamp or die for impressing into a disc or tablet of suitable material to produce the ultimate or commercial zigzag disc sound-record aforesaid. As I have already said, such work has to be done by one having an expert's knowledge of the business of whom there are not more than a half dozen recognized as experts. Of these Eldridge R. Johnson of Philadelphia, Pa., is probably the best known and the most conspicuous rival of complainant. I know of my own knowledge that the reason why the said JOHN C. ENGLISH, defendant herein refuses to carry out his said contract of March 1, 1901, is because he has gone over to said Eldridge R. Johnson and is now actually in his employment, at Philadelphia, Pa. and engaged in making and producing said zigzag disc sound-records and doing and performing the identical kind of work for which complainant engaged him at a large expense for its exclusive benefit for a period of five years from said first day of March, 1901. As President of complainant I have ordered the said ENGLISH to return to its employment but he has refused and still refuses to do so. My personal representative has within the past day or two called on the said ENGLISH at the place of business of the said Johnson in Philadelphia, Pa., and personally ascertained that the said

ENGLISH is in the employ of the said Johnson and further that he prefers and intends to remain his contract with complainant to the contrary notwithstanding. If the said ENGLISH is allowed to break his contract with complainant in this fashion and to do the identical kind of work for a rival for which he agreed to give his exclusive services to complainant, the damages and injury to complainant through the loss of his services will be irreparable and irremediable.

I have been reliably informed and believe it to be true that the said JOHN C. ENGLISH intends to call on me at my office, No. 93 Chambers Street in the City, County and State of New York on the afternoon of Saturday, the 8th instant, and unless a restraining order be granted strictly enjoining and restraining him until the hearing and decision of the said motion for preliminary injunction herein, and the entry of an order therein, not to give any of his time, work, services, skill or attention to any person, firm, association or corporation, other than your orator, the said JOHN C. ENGLISH will depart from the jurisdiction of the Court which will render it impossible for the complainant to prevent him from doing and performing the acts and things complained of which will work irreparable injury and damages to complainant.

Subscribed and sworn to before me,
this 7th day of February, 1902.


Edward D. Easton.


William E. Hills,
Notary Public,
New York County.